

SENATE CHAMBER, }
AUSTIN, TEXAS, Thursday, March 9, 1871. }

Senate met pursuant to adjournment; Hon. Don Campbell, President, in the chair.

Roll called; quorum present.

Absent—Senators Braughton, Dillard, Ford, Mills, Pettit.

On motion of Senator Ruby, the reading of the journal was dispensed with.

Message from the House by Chief Clerk, informing the Senate the House had passed Senate bill No. 43, "An act to incorporate the Gonzales Agricultural and Industrial Association," with amendments.

Also, for concurrence, House joint resolution No. 23, "Joint resolution asking the Congress of the United States to send a joint committee to inquire into and report upon the number of murders and extent of the outrages committed in Texas during the last five years, and now being committed in Texas by bands of Indians living within the territory of the United States and harbored within the Republic of Mexico."

Also, House bill No. 69, "An act to amend an act entitled 'an act to organize the courts of justices of the peace and county courts and to define their jurisdiction and duties,' approved August 13, 1870."

Also, House bill No. 78, "An act making an appropriation for repairing and improving the State cemetery."

Also, House bill No. 81, "An act to authorize the county courts of the several counties of the State to sell one set of the Texas Supreme Court Reports, now the property of their respective counties."

Also, House bill No. 120, "An act to authorize the presiding justices of the several counties to perform certain acts for the benefit of idiots and insane persons."

Also, House bill No. 126, "An act to amend section twelve of 'an act prescribing the times of holding the district courts in the several judicial districts of the State of Texas,' approved August 10, 1870."

Also, House bill No. 163, "An act to incorporate Austin Hook and Ladder Company No. 1, of the city of Austin."

Also, House bill No. 180, "An act to authorize Car Forrest to erect a toll bridge over Chambers' creek, in Ellis county, Texas."

Also, House bill No. 194, "An act to incorporate the Huntsville Branch Railway Company."

Also, House bill No. 391, "An act to amend an act entitled 'an act prescribing the times of holding the district courts in the several judicial districts in the State,' approved August 10, 1870."

Also, House bill No. 392, "An act making an appropriation for the per diem pay of the members and the per diem pay of the officers and employes of the Twelfth Legislature of the State of Texas."

REPORTS OF STANDING COMMITTEES.

Reports of Committee on Judiciary:

COMMITTEE ROOM,
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 206, entitled "An act to incorporate the town of San Eleceario," instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,
Chairman.

COMMITTEE ROOM,
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 216, to be entitled "An act to incorporate the town of Socorro," having had the same under careful consideration, respectfully ask leave to report the same back and recommend its passage.

A. J. FOUNTAIN,
Chairman.

COMMITTEE ROOM,
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 217, entitled "An act to incorporate the town of Ysleta," ask leave to report the same back and recommend its passage.

A. J. FOUNTAIN,
Chairman.

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,
President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred Senate joint resolution No. 16, in relation to payment of salaries of district judges, instruct me to report the same back and recommend its passage, with the accompanying amendment.

Respectfully,

A. J. FOUNTAIN,
Chairman.

Amend line three of the resolution by inserting after the word "authorize," the words "and required."

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,
President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred Senate bill No. 75, entitled "An act to incorporate the Austin Gas Company," instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,
Chairman.

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,
President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred Senate bill No. 134, entitled "An act to amend the fourth section of 'an act to reduce into one and amend the several acts concerning executions,' approved January 27, 1842," having carefully considered the same, instruct me to report the bill back with the recommendation that it do not pass.

Respectfully,

A. J. FOUNTAIN,
Chairman.

Reports read and laid over under the rules.

Report of Committee on Engrossed Bills :

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,
President of the Senate :

SIR : Your Committee on Engrossed Bills having examined and

compared Senate bill No. 94, "To give effect to the several provisions of the Constitution concerning taxes," Senate bill No. 222, "making an appropriation for the mileage and per diem pay of the members and the per diem pay of the officers and employes of the Twelfth Legislature of the State of Texas," Senate bill No. 123, "An act in relation to the Atlantic and Pacific Railroad Company," and Senate joint resolution No. 25, "respecting our postal service," find the same to be correctly engrossed.

G. T. RUBY, Chairman.
E. L. DOHONEY,
P. W. HALL.

Report read and received, and the Secretary carried to the House for concurrence Senate bills Nos. 94, 222, 123 and 25.

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Engrossed Bills having carefully examined and compared Senate bill No. 63, "to incorporate the Callahan Cotton Seed Oil Manufacturing Company of Hempstead, Texas," Senate bill No. 65, "to prevent the sale of spirituous, vinous or malt liquors within two miles of the Eureka Mills, in Harris county," Senate bill No. 55, "to incorporate the East Texas Cotton, Woolen and Cotton Seed Oil Manufacturing Company," Senate bill No. 79, "to amend an act granting pensions to the surviving veterans of the revolution which separated Texas from Mexico," Senate bill No. 108, "to incorporate the Navasota, Washington and Brazos Bridge Company," Senate bill No. 112, "for the relief of the Eastern Texas Railroad Company," Senate bill No. 200, "to prohibit the sale of intoxicating and spirituous liquors within one and a half miles of Oso, Fayette county," and Senate bill No. 132, "authorizing C. C. Dewitt and J. M. Harwood, of Gonzales county, to construct a bridge across the Guadalupe river, at or near Gonzales, in Gonzales county," find the same to be correctly engrossed.

G. T. RUBY, Chairman.
E. L. DOHONEY,
P. W. HALL.

Report read and received, and the Secretary carried to the House for concurrence Senate bills Nos. 55, 65, 66, 79, 108, 112, 132, 200.

Senator Dohoney submitted the following report of the Committee on Judiciary:

COMMITTEE ROOM,
AUSTIN, March 8, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, having had under consideration Senate bill No. 84, and the memorial of the bar of Paris, Texas, in reference to *pro tem.* district judges, instruct me to report the accompanying substitute, and recommend its passage.

E. L. DOHONEY,
For Committee.

Substitute Senate bill No. 84, "An act providing for *pro tem.* district judges in the county of Lamar.

Report and substitute read first time.

On motion of Senator Dohoney, the rules were suspended to consider the report and Senate bill No. 84.

Senate bill No. 84 read second time.

On motion of Senator Dohoney, the substitute for Senate bill No. 84, reported by the Committee on Judiciary, was adopted.

On motion of Senator Dohoney, the rules were further suspended, and substitute Senate bill No. 84 was read the third time and passed.

Reports of the Committee on Education :

COMMITTEE ROOM,
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL.

President of the Senate :

SIR: Your committee, to whom was referred Senate bill No. 178, have had the same under consideration, and the majority thereof instruct me to submit the following report :

Upon examination your committee find a special statute incorporating L. C. Eroendberg and some seven associates, to be styled the "President and Trustees of Herman University, approved January 27, 1844, and in the seventh year of the independence of the Republic of Texas," and section twelve declares that aforesaid president and trustees are hereby authorized to locate and have surveyed for the use of said University one league of any vacant land of the Republic of Texas, and the Commissioner of the General Land Office is hereby required to issue a patent for said land whenever the survey thereof shall have been made according to law. No limit is specified beyond which this act shall not take effect. By act of April 11, 1846, the eighth and eleventh sections of the aforesaid charter were so amended that the said University shall be located at *some place* to be designated by the president and trustees instead of near Mill creek or Cummins' creek, as designated in the act of Jan-

uary 27, 1844. The act of 1860, approved eleventh February, is entitled "An act to amend an act to incorporate Herman University, approved January 27, 1844." This changes the name of Herman University to that of Herman Seminary, in section one. Section ten requires that the location of said seminary shall be at some place to be *designated* by the president and trustees near the line between Austin and Colorado counties, and between Mill creek, in Austin county, and Cummins' creek, in Colorado county; and section two declares that the Herman Seminary herein and hereby created shall, by virtue of this act, succeed to all the rights and property heretofore vested in the act to which this is an amendment; and section three, that this "act shall take effect from and after its passage, *and continue in force for twenty years.*"

Now, the act of August 10, 1870, entitled "An act to incorporate Herman University," approved January 27, 1844, as amended by an act passed April 11, 1846, makes no mention whatever of the act of 1860, but incorporates a new board of trustees. Section eight declares that said university shall be located at a place to be designated by the shareholders thereof, but after being once located shall not be removed into any other county without the majority of all the stockholders consenting.

Section nine declares that the right, title and interest of a certain league of land granted to said university by the Republic of Texas in section twelve of "An act to incorporate Herman University," approved January 24, 1844, heretofore located and surveyed in the county of Gillespie, is hereby vested in the corporators created by section one of this act, and that the Commissioner of the General Land Office is hereby authorized to issue a patent for said league of land to the corporators of Herman University named in section one of this act.

Now your committee submit:

1. That the aforesaid act of 1860 not being referred to at all by the act of 1870, was not repealed by the latter.

2. That the two acts are evidently in conflict, *e. g.*: the act of 1870 changes the name of Herman Seminary in the act of 1860, to that of Herman University.

3. The act of 1870 creates an entirely new board of trustees; and

4. Removes the institution from the line of Austin and Colorado counties to Comal county, distant some one hundred and twenty miles from the original site of said institution. The majority of your committee therefore are free to express the opinion that a great and grievous wrong has been perpetrated upon the people of Frels-

burg, a town located near the aforesaid line of Austin and Colorado counties, and between the aforesaid Mill creek, in Austin county, and Cummins' creek, in Colorado county, by the attempt to appropriate all the rights, immunities, privileges, franchises and grants of said Herman's University, secured originally and vested in the trustees of said institution by act of 1860. We therefore recommend that the act entitled "An act to repeal an act approved August 10, 1870, entitled 'an act to amend an act to incorporate Herman University, approved January 27, 1844,' " as amended by an act passed April 11, 1846, do pass.

E. PETTIT,
Chairman.

COMMITTEE ROOM,
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL,
President of the Senate:

SIR: Your committee to whom was referred Senate bill No. 213, entitled "An act to prohibit the sale of intoxicating liquors in the vicinity of Jamestown High School, have had the same under consideration and the majority thereof instruct me to report the bill back to the Senate with the recommendation that it do pass.

E. PETTIT,
Chairman.

COMMITTEE ROOM.
AUSTIN, March 7, 1871.

Hon. DON CAMPBELL,
President of the Senate:

SIR: Your committee to whom was referred Senate bill No. 214, entitled "An act to incorporate Jamestown High School," have had the same under consideration and the majority thereof instruct me to report the bill back to the Senate with the recommendation that it do pass.

E. PETTIT,
Chairman.

Reports read and laid over under the rules.

BILLS AND RESOLUTIONS.

Senator Ruby offered the following resolution which was adopted:
Resolved, That Frank J. Webb be and is hereby appointed assistant engrossing clerk of the Senate.

Senator Gaines offered the following resolution:

Resolved, That it is hereby made the duty of pages and messenger every morning to call on Senators and see if they need any postage stamps and bring the same to them at any time.

On motion of Senator Pridgen, it was laid on the table.

By Senator Tendick: A bill (Senate bill No. 223) "An act authorizing the compromise of certain suits brought by the State in the District Court of Colorado county." Read first time and referred to the Committee on Judiciary.

By Senator Tendick: (Senate joint resolution No. 26) "Joint resolution for the relief of Dillard Cooper." Read first time and referred to Committee on Finance.

By Senator Flanagan: A bill (Senate bill No. 224) "To incorporate the Henderson Male and Female College." Read first time and referred to Committee on Education.

By Senator Flanagan: A bill (Senate bill No. 225) "An act to incorporate the Louisiana and Texas Steamship Company." Read first time and referred to Committee on Internal Improvements.

By Senator Rawson: a bill (Senate bill No. 226) to be entitled "An act to incorporate the Hebrew Benevolent Association of Marshall, Texas."

Read first time, and referred to Committee on State Affairs.

On motion of Senator Pickett, the rules were suspended to take from file House bill No. 27, "An act for the relief of Judge M. B. Walker of the Supreme Court." Read first time.

Senator Pickett moved a suspension of the rules to place House bill No. 27 on its second reading.

Motion to suspend the rules lost.

On motion of Senator Baker, the rules were suspended to take from file Senate bill No. 43, "An act to incorporate the Gonzales Agricultural and Industrial Association," with the following House amendments: Amend section three, line eight, by striking out after the word "each" the words "in specie;" also, section 11, so as to read as follows: "That this act shall be in force for the period of thirty years, and take effect and be in force from and after its passage."

On motion of Senator Baker, the House amendments were concurred in.

GENERAL FILE.

Senate bill No. 16, to be entitled "An act for the relief of Alford S. Thurmond." Read second time.

On motion of Senator Pickett, the report of the Committee on Claims and Accounts, recommending that the bill do not pass, was adopted.

Senate bill No. 95, an act to be entitled "An act to incorporate the San Antonio Hebrew Benevolent Association." Read second time.

On motion of Senator Flanagan, the following amendments reported by the Committee on State Affairs, were adopted: Amend in section three, line ten, after the words "United States" add "and of the State of Texas."

Senate bill No. 95 ordered engrossed and passed to a third reading as amended.

On motion of Senator Fountain, the rules were suspended and Senate bill No. 95 was read a third time and passed.

By leave, Senator Bowers introduced a bill, Senate bill No. 227, an act to be entitled "An act to provide for the appointment of auditors and define their duties, powers and fees." Read first time and referred to the Committee on Judiciary.

GENERAL FILE—Resumed.

Senate bill No. 5, to be entitled "An act to regulate the duties of cotton weighers."

On motion of Senator Pickett, Senate bill No. 5 was made the special order for Tuesday next at 12 M.

Senate bill No. 6, an act to be entitled "An act to incorporate Paris Commercial College." Read second time.

Senator Dohoney moved to amend by striking out the name of E. L. Dohoney.

Motion lost.

Senate bill No. 6 ordered engrossed and passed to a third reading.

On motion of Senator Fountain, the rules were suspended and Senate bill No. 6 was read a third time.

Senator Bowers moved to amend by striking out the name of E. L. Dohoney.

Lost.

On motion of Senator Douglass Senate bill No. 6 passed.

Senate bill No. 48, "An act to be entitled an act requiring land certificates and field notes to be returned to the General Land Office." Read second time.

Senator Pickett moved to refer Senate bill No. 48 to the Committee on Judiciary, which motion was adopted.

Senate bill No. 31, "An act to incorporate Douglassville College." Read second time.

On motion of Senator Ruby the following amendments, reported by the Committee on Education, were adopted: Amend in section five, line one, strike out the words "shall be empowered by;" and insert "may, upon the recommendation of," and in the second line strike out the word "two." Ordered engrossed and passed to a third reading as amended.

On motion of Senator Ruby the rules were suspended; Senate bill No. 31 was read third time and passed.

Senator Fountain offered the following resolution, which was adopted:

Resolved, That the Sergeant-at-Arms be and he is hereby instructed to procure for each Senator a bill file, for printed Senate bills, and to have placed in each file a copy of every bill printed for the use of the Senate at this session.

Senator Ruby submitted the following report of Committee on Engrossed Bills:

COMMITTEE ROOM,
AUSTIN, March 9, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Engrossed Bills having examined and compared Senate joint resolution No. 24, "Instructing our Senators and requesting our Representatives in Congress to use their exertions to effect the removal of bands of Comanche and Kiowa Indians to a point at least one hundred and fifty miles from the civilized settlements or organized counties in Texas," find the same to be correctly engrossed.

G. T. RUBY,
E. L. DOHONEY,
P. W. HALL.

Report read and received.

On motion of Senator Pridgen, the rules were suspended to take from file House bill No. 314, "An act permanently locating the county seat of Refugio county at the town of Rockport." Read first time.

On motion of Senator Pridgen, the rules were further suspended and House bill No. 314 read second and third times and passed.

GENERAL FILE—Resumed.

Senate bill No. 28, "An act to provide for the employment of private clerks for the judges of the Supreme Court." Read second time.

Senator Bowers moved to amend section one, line seven, by striking out "fifteen hundred dollars" and inserting "six hundred dollars."

Senator Dohoney moved to amend the amendment by striking out "six hundred dollars" and inserting "one thousand dollars."

Yeas and nays called for and lost by the following vote:

Yeas—Dohoney, Douglass, Hall, Hertzberg, Parsons, Pettit, Rawson, Ruby—8.

Nays—Mr. President, Bell, Bowers, Braughton, Cole, Evans, Flanagan, Ford, Fountain, Gaines, Hillebrandt, Latimer, Pickett, Pridgen, Pyle, Saylor, Shannon, Tendick—18.

The question recurring, on the motion of Senator Bowers, to amend by striking out "fifteen hundred dollars," and insert "six hundred dollars."

Yeas and nays called for and lost by the following vote:

Yeas—Bell, Bowers, Braughton, Cole, Douglass, Evans, Flanagan, Hillebrandt, Latimer, Pyle, Shannon—11.

Nays—Mr. President, Dohoney, Ford, Fountain, Gaines, Hall, Hertzberg, Parsons, Pettit, Pickett, Pridgen, Rawson, Ruby, Saylor, Tendick—15.

Senator Ruby moved that the bill be engrossed.

Senator Douglas moved to strike out the words "fifteen hundred dollars," which motion was adopted.

Senator Bowers moved to fill the blank by inserting "seven hundred and fifty dollars."

Senator Saylor moved to fill the blank by inserting "twelve hundred dollars."

Yeas and nays called for and the amendment was adopted by the following vote :

Yeas—Mr. President, Douglass, Ford, Fountain, Gaines, Hall, Hertzberg, Parsons, Pickett, Pridgen, Pyle, Rawson, Ruby, Saylor, Tendick—15.

Nays—Bell, Bowers, Braughton, Cole, Dohoney, Evans, Flanagan, Hillebrandt, Latimer, Pettit, Shannon—11.

Senator Ruby moved that Senate bill No. 28 be engrossed and pass to a third reading.

Yeas and nays called for and carried by the following vote :

Yeas—Mr. President, Dohoney, Ford, Fountain, Gaines, Hall, Hertzberg, Parsons, Pickett, Pridgen, Pyle, Rawson, Ruby, Saylor, Tendick—15.

Nays—Bell, Bowers, Braughton, Cole, Douglass, Evans, Flanagan, Hillebrandt, Latimer, Pettit, Shannon—11.

On motion of Senator Pettit, the Senate adjourned to 10 A. M. to-morr w.